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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 TYSHON MAIKE HARMON,
11 Petitioner,
12 v.
13 M. EVANS, Warden,
14 Respondent.

Civil No. 07CV1648 JAH(BLM)

**ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY**

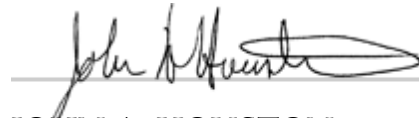
15 Petitioner, a state prisoner appearing *pro se*, filed petition for writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254, on August 20, 2007, challenging his conviction in state
17 court. The matter was referred to Honorable Barbara Lynn Major, United States
18 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)B) and Local Rule HC.2(a). On
19 November 2, 2007, Respondent filed a motion to dismiss the petition as barred by the
20 statute of limitations. Magistrate Judge Major filed a Report and Recommendation
21 (“Report”) on February 20, 2008, advising this Court to dismiss the petition. Judge Major
22 found the petition, which was filed more than nine years after the limitation period
23 expired, was untimely and Petitioner was not entitled to statutory or equitable tolling. On
24 April 2, 2008, Petitioner filed objections to the magistrates judge’s findings that equitable
25 tolling was not warranted and Petitioner was not entitled to discovery or an evidentiary
26 hearing. The Court overruled Petitioner’s objections, adopted the Report in its entirety
27 and dismissed the petition.

28 On September 4, 2008, Petitioner filed a notice of appeal which included a request

1 for a certificate of appealability. See Doc. No. 16. A certificate of appealability is
 2 authorized “if the applicant has made a substantial showing of the denial of a
 3 constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this threshold showing, a
 4 petitioner must show : (1) the issues are debatable among jurists of reason; or (2) that a
 5 court could resolve the issues in a different manner; or (3) that the questions are adequate
 6 to deserve encouragement to proceed further. Lambright v. Stewart, 220 F.3d 1022,
 7 1024-25 (9th Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473 (2000) and Barefoot v.
 8 Estelle, 463 U.S. 880 (1983)).

9 Here, Petitioner appeals this Court’s order and judgment dismissing the petition for
 10 writ of habeas corpus. In overruling Petitioner’s objections and dismissing the petition,
 11 this Court agreed with the magistrate judge’s determination that Petitioner presented
 12 insufficient evidence to support his claim of mental illness, and failed to show a causal
 13 connection between his asserted infirmities and his failure to timely file his habeas corpus
 14 petition, and therefore, he was not entitled to equitable tolling. See Doc. No. 14 at. 6.
 15 The Court further found Petitioner was not entitled to discovery or an evidentiary hearing,
 16 because Petitioner failed to allege facts, if proven, would demonstrate his incompetence
 17 prevented him from filing a timely petition, thereby failing to demonstrate good cause.
 18 This Court finds that a certificate of appealability is not warranted in this instance because
 19 the dismissal of the petition under the circumstances here is not an issue debatable among
 20 jurists of reason nor could any other court resolve the issue in a different manner.
 21 Lambright, 220 F.3d at 1024-25. Accordingly, this Court **DENIES** Petitioner’s motion
 22 for a certificate of appealability.

23 DATED: September 11, 2008

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 25 JOHN A. HOUSTON
 26 United States District Judge
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